

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JESS RICHARD SMITH,

Plaintiff(s),

v.

SGT. ELLIS et al.,

Defendant(s).

CASE NO. 3:18-cv-05427-TL

ORDER

This matter is before the Court on Plaintiff's motion for composition of the record on appeal. Dkt. No. 65. Having considered the relevant record, the Court hereby DENIES the motion.

I. BACKGROUND

Plaintiff Jess Richard Smith appeals this Court's order adopting the Magistrate Judge's Report and Recommendation and granting Defendants' motion for summary judgment. Dkt. No. 61 (order); Dkt. No. 63 (notice of appeal). Mr. Smith now moves this Court to "order composition of the record on appeal to the 9th Circuit," citing Federal Rules of Appellate Procedure ("FRAP") 10(a) and 11. Dkt. No. 65, at 1.

II. DISCUSSION

The Ninth Circuit has electronic access to the record of this case as filed in this Court. Further, the Ninth Circuit may specifically request all or part of the record, in which case “[t]he district court clerk shall transmit the record . . . within 7 days of receiving the request.” Ninth Circuit Rule 11-4.4. Here, no such request from the Ninth Circuit has been received.

The Ninth Circuit does require parties to file Excerpts of Record, containing all the documents in the record that are necessary to understand and decide the issues on appeal. Ninth Circuit Rule 30-1.1; *see also* advisory committee note to Rule 30-1.1. However, because Mr. Smith is a party “proceeding without counsel,” he does not need to file Excerpts of Record; instead, that obligation goes to Defendants. *See* Ninth Circuit Rules 30-1.2, 30-1.2. *Cf. Wahl v. Sutton*, No. 1:16-cv-01576-LJO-BAM (PC), 2019 WL 5536318, at *1 (E.D. Cal. Oct. 25, 2019) (denying *pro se, in forma pauperis* prisoner appellant’s motion for the record on appeal on similar grounds).

The Court appreciates Plaintiff’s review of the appellate rules and desire to ensure that the Ninth Circuit has the record it needs, but no action from Plaintiff or this Court on transmitting the records to the Ninth Circuit seems to be required at this time.

III. CONCLUSION

Accordingly, Plaintiff’s motion for “composition of the record on appeal” (Dkt. No. 65) is DENIED.

Dated this 8th day of July 2022.



Tana Lin
United States District Judge